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C O N F I D E N T I A L SECTION 01 OF 02 BAGHDAD 003714

SIPDIS

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TAGS: [PGOV](#) [PHUM](#) [IZ](#)

SUBJECT: IRAQ CONSTITUTION: NO FINAL DEAL YET

Classified By: (U) Classified by CDA David Satterfield,
reason 1.4 (b) and (d).

1. (C) Summary: Top Shia Coalition official and Deputy Speaker of the Transitional National Assembly Hussein Shahrستاني told Charge September 10 morning that there is not yet a final deal between the Kurds and the Shia Coalition about the draft constitution text. The key sticking point remains Kurdish approval of compromise language about regional entities' control of water resources worked out between the Shia Coalition and aides to Barzani with help from UN experts. Shahrستاني said Ayatollah Sistani on September 9 insisted on the compromise language. The Najaf clerical establishment views shared control of water resources as one of "justice" between different parts of the country. The Shia clerical establishment would probably not endorse the draft text without the compromise water language proposed to Kurdish leader Masood Barzani, Shahrستاني predicted. The Shia Coalition therefore would withdraw its agreement to the Kurdish proposed amendment to the draft constitution text to allow for two deputy prime ministers in the elected permanent government. The Shia Coalition would also withdraw its agreement with the Kurds' proposed method of determining the number of seats each governorate would have in the future assembly in the new election law. Shahrستاني urged the Charge to secure Barzani's agreement to the draft water language so that the whole package deal could move forward when the National Assembly resumes work on September 11. Charge underlined American interest in getting the draft constitution and election law finalized and moving on to the referendum and December elections. He pledged we would be in contact with Barzani on September 10. Shahrستاني, and our other contacts in Baghdad, seem less interested in the discussions between Sunni Arabs and Kurds about amending the text slightly to gain some measure of Sunni Arab support. End Summary.

SHIA-KURD DEAL STUCK OVER WATER

2. (C) Parliament Deputy Speaker Shahrستاني told Charge September 10 morning that the Shia Coalition was adamant that the Kurds agree to compromise language on control of Iraqi water resources or there would be no deal on the entire draft text. The issue remains the language concerning Kurdish authority to control water resources in Kurdish regions that later flow into the rest of Iraq. (The compromise language, worked out with UN experts, would rewrite Articles 108 and 111 such that the central government would have the authority to set broad water resource policy, while giving the regions - such as the Kurdish region - the authority to manage water resources until they flow out of the region in question.)

SISTANI ADAMANT ON LIMITING KURD WATER CONTROL

3. (C) Shahrستاني said he had met in Najaf September 9 with Ayatollah Sistani who was personally insistent that the Kurds could not be allowed to control water resources in Kurdistan that eventually flow into the rest of Iraq without reference to the central government. Shahrستاني acknowledged that studies from the Arizona Arid Lands Research Center and from a Dutch institute show that only 33-39 percent of the Tigris water passes through or rises from Kurdish regions. However, he said, Sistani views the water control issue as one of justice. Shahrستاني said Sistani viewed this as a religious obligation based on injunctions from the Quran and the Hadith that make water resources communal, not personal, property. It is very possible, Shahrستاني warned, that the Najaf clerical establishment will not endorse the draft constitution if the water issue is not resolved. Their declining to endorse the draft will boost the odds that the draft will not secure majority approval in the referendum, he cautioned.

WATER IMPASSE COULD UNRAVEL OTHER DEALS

4. (C) Shahrستاني said that he understood Kurdish Regional Government President Masood Barzani had not yet agreed to the compromise language. In return, he cautioned, the Shia Coalition likely would reject two other tentative compromises

reached with the Kurds:

-- Article 135 of the constitution draft would establish two deputy prime minister positions for the first electoral cycle, a demand the Kurds had put forward;
-- the basis of calculating the populations of governorates to determine the number of seats each governorate would have in the future national assembly might be changed in the draft election law. At present the Shia Coalition has agreed with the Kurdish proposal to use voter lists that give the Kurds a few extra seats, instead of using food ration card data. The Shia Coalition could go back to using the food ration card data.

IF WATER DEAL FINALIZED, THE WAY AHEAD

15. (C) Shahrستاني said that if a deal on water language can be reached September 10, the Transitional National Assembly (TNA) Constitution Committee on Sunday, September 11 will vote to approve the changes to Articles 108, 111 and 135. This amended text will go to the UN team for printing and distribution nationwide. If there is no deal on September 10, however, the TNA likely will take no action on either the draft constitution or the election law. He warned that the Shia Coalition majority in the TNA have grown distrustful of the Kurdish negotiating tactics, and many also perceive the Americans are helping the Kurds raise the water issue. There will be no further compromise from the Shia Coalition on the water issue, he concluded. He urged the Charge to convince Barzani to accept the compromise water language. Charge underlined American determination to finalize the draft text and pledged we would be in close contact with Barzani on September 10.

WHAT ABOUT THE SUNNI ARABS ?

16. (C) Shahrستاني also said that as a separate issue the Shia Coalition would accept language proposed by the Sunni Arab negotiators to change Article 3 so that it would state that Iraq is "part of the Arab and Islamic worlds" or "part of the Arab nation." He said this was one of two fundamental demands of the Iraqi Islamic Party. He was dubious that the Kurds would accept the Sunni Arab demand in any case. Moreover, the IIP also seeks language in Article 114 or Article 115 to limit the number of governorates that can join to form a region. The Shia Coalition will never accept this, he stated flatly.

17. (C) Shahrستاني said that further small amendments to the draft constitution text (such as on Article 3) should be possible even if the TNA Constitution Committee finalizes the draft September 11. These changes could be labeled as adjustments "in response to public demand" following circulation of the text. He indicated these changes could be made to the draft for several weeks yet.

COMMENT

18. (C) We have confirmation from Barzani confidante Rowsch Shaways and from Shia Coalition official Adel Abdel Mehdi that the final decision on the water language rests with Masood Barzani. Shahrستاني and Abdel Mehdi both seemed not overly concerned about getting more Sunni Arab agreement. (See septel on the Sunni Arab discussions in Erbil.) By contrast, both men made clear that the water language is critical.
Satterfield